NO. 48693-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

JOHN STRANDE PRITCHARD JR, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-01644-0

BRIEF OF RESPONDENT

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Court of Appeals Case Number: 48693-8

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TABLE OF AUTHORITIES

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A. RESPONSE TO ASSIGNMENTS OF ERROR

I. The trial court properly denied the motion to suppress.

II. The State does not intend to ask for appellate costs.

B. STATEMENT OF THE CASE

On August 27, 2015, Sgt. Wilson of the Battle Ground Police Department was on patrol on Southwest Eaton Boulevard. RP 12-13. He was driving behind a driver, later determined to be Pritchard, who pulled over to the side of the road a few blocks after Sgt. Wilson began driving behind him. RP 14-15. Sgt. Wilson found that odd, and traveled past where Pritchard had stopped and parked in a school parking lot. RP 14. The car passed Sgt. Wilson, and Wilson then pulled back onto the roadway and again drove behind Pritchard. RP 15. At one point Pritchard tried to turn right off the roadway at a point where the road was closed off, and was redirected by construction flaggers. RP 15. Shortly thereafter Pritchard again pulled over to the side of the road and activated his hazard lights. RP 16. There was no shoulder where Pritchard pulled off, just a white line and a ditch. RP 16. The area was unlit. RP 16.

Sgt. Wilson pulled over as well, concerned both about whether Pritchard needed help and the public safety issue stemming from how Pritchard was parked. RP 16. Sgt. Wilson did not activate his emergency lights or initiate

a seizure of Pritchard. RP 17. Wilson's car was not blocking Pritchard's car. RP 17. Pritchard was outside his car looking at the left front tire of his car. RP 17. Sgt. Wilson asked Pritchard is everything was okay. RP 17. Pritchard said he thought there was something wrong with his tire because the car was wiggling as he was driving. RP 18. Sgt. Wilson looked at the tire with Pritchard and didn't see anything wrong with it. RP 18. Pritchard was shaky and nervous, and kept looking away from Wilson. RP 18. Wilson asked Pritchard whether he had a driver's license. RP 18-20. Pritchard handed Wilson a Colorado driver's license. RP 20, CP 50. During or after when Pritchard handed Wilson the license, Wilson asked Pritchard if the license was good or suspended. CP 50, RP 20-21. Pritchard seemed uncertain and nervous, and Wilson asked him if the license was suspended. RP 21, CP 50. Pritchard said it might be suspended due to child support arrears. RP 21, CP 50. At that point, Sgt. Wilson ran the license and found that it was suspended. CP 50. Sgt. Wilson did not leave Pritchard's presence or change his location at all while running the check. CP 50.

Sgt. Wilson decided not to arrest or even cite Pritchard. CP 50. Sgt. Wilson told him that if his passenger was a licensed driver, she was welcome to drive the car away. CP 50. Unprompted, Pritchard opened his driver's side door to speak to his passenger (rather than simply going

around to the passenger side, which he was perfectly free to do) and Sgt. Wilson saw a baggie of methamphetamine on the driver's side floorboard. CP 50-52. At that point, Sgt. Wilson arrested Pritchard for possession of a controlled substance. CP 50. Sgt. Wilson obtained a search warrant for the car. CP 50-52.

Prior to trial Pritchard moved to suppress the methamphetamine. The motion was denied and the trial court entered findings of fact and conclusions of law. CP 49-52. This timely appealed followed Pritchard's subsequent conviction for possession of methamphetamine.

C. ARGUMENT

I. The trial court properly denied the motion to suppress

Pritchard fails to assign error to any particular conclusion of law, of which there are eight. This is frustrating because in the trial court's findings of fact and conclusions of law there is no moment identified at which the seizure begins. Rather, in viewing the document as a whole, it appears that the trial court found a seizure occurred at some point after Pritchard told Sgt. Wilson he was unsure whether his license was valid or suspended. The trial court identified that event as the point at which reasonable suspicion under *Terry* was formed. The trial court also noted that the mere holding of Pritchard's license, while in Pritchard's presence,

did not amount to a seizure. See CP 51, Conclusions of Law 4 & 6. Thus, according to the findings of fact and conclusions of law, the seizure began no earlier than when reasonable suspicion was formed, and no later than the point at which Officer Wilson learned, from dispatch, that Pritchard's license was suspended.

Despite the lack of clarity borne of Pritchard's failure to assign error to a particular conclusion(s) of law, the State believes that Pritchard assigns error to the trial court's conclusion that the seizure did not begin until Sgt. Wilson received confirmation that Pritchard's license was suspended. That occurred *after* the point when reasonable suspicion under *Terry* was formed, according to conclusions of law numbers four and five (a conclusion that Pritchard does *not* disagree with, based on a fair reading of his brief). Rather, Pritchard asserts that the seizure began when Officer Wilson asked Pritchard whether he had a driver's license. (As noted in the statement of facts, Sgt. Wilson did not demand, or even ask, Pritchard to hand over a physical license. Rather, he inquired whether he *had* a license. Pritchard, in the absence of a demand, voluntarily handed his plastic license card to Sgt. Wilson. Pritchard, having not assigned error to any of the trial court's findings of fact, accepts these facts as true). Thus, the seizure did not begin earlier than the point at which the trial court found the officer formed reasonable suspicion. Notably, Pritchard does *not*

challenge the trial court's conclusion that the statements Pritchard made to the officer about whether he might be driving on a suspended license provided reasonable suspicion of criminal activity. RP 43, CP 51, Conclusion of Law 4. Rather, Pritchard asserts those statements were made *after* seizure had commenced.

Pritchard's argument that the trial court erred in denying his motion to suppress should be rejected by this Court. The trial court correctly concluded that the seizure in this case did not occur until after the officer had already developed reasonable suspicion of criminal activity. Sgt. Wilson's question to Pritchard about whether he had a license was not a seizure. It was a simple question, not a demand for identification. That Pritchard produced his plastic license without having been asked to produce it does not convert this contact into a seizure.

> A police officer has not seized an individual merely by approaching him in a public place and asking him questions, as long as the individual need not answer and may simply walk away. *State v. Thomas*, 91 Wn.App. 195, 200, 955 P.2d 420, *review denied*, 136 Wash.2d 1030, 972 P.2d 467 (1998) (citations omitted). Moreover, police questioning relating to one's identity, or a request for identification by the police, without more, is unlikely to result in a seizure. *State v. Armenta,* 134 Wn.2d 1,11, 948 P.2d 1280.

State v. Hansen, 99 Wn.App. 575, 578, 994 P.2d 855 (2000).

Pritchard was not stopped pursuant to a traffic stop. He was free to leave. He handed Sgt. Wilson his driver's license without it having been

requested. When the officer ran Pritchard's name, he stayed in Pritchard's presence and didn't change his location. In *Thomas*, supra, a seizure was found where took the defendant's license and stepped to the back of the car to call in the defendant's information. 91 Wn.App. at 198, 201. In *State v. Dudas*, the defendant was seized when the officer took his ID card and returned to his patrol car, which immobilized the defendant. 52 Wn.App.832, 834, 764 P.2d 1012 (1988). In *State v. Aranguren*, likewise, a seizure was found where the officer took the defendant's identification back to his patrol car for the purpose of running a warrants check. 42 Wn.App. 452, 455, 711 P.2d 1096 (1985).

Here, the officer remained in the same place he was when Pritchard handed him his driver's license. He did not go back to his patrol car or move to a different position. Immediately after being handed Pritchard's license Sgt. Wilson learned that Pritchard may have a suspended license. The trial court correctly found that reasonable suspicion was formed at that point—prior to any seizure.

The legal standard of review is well settled:

> [T]he determination of whether a seizure has occurred is a mixed question of law and fact. The resolution by a trial court of differing accounts of the circumstances surrounding the encounter are factual findings entitled to great deference. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994) (stating that findings of fact are binding on appeal if there is substantial evidence in the record supporting the facts). However, the ultimate determination of

> whether those facts constitute a seizure is one of law and is reviewed de novo.

Thomas at 200 (some internal citations omitted).

Applying this standard of review, the trial court correctly held that the seizure in this case was supported by reasonable suspicion of criminal activity.

Even if the initial seizure were not supported by reasonable suspicion, Pritchard ignores the fact that the methamphetamine was not discovered as the result of a search. Rather, the methamphetamine was discovered while Pritchard, in a public place and in the presence of an officer, opened his driver's side door (despite not having been ordered to do so), and revealed methamphetamine sitting on his driver's floorboard. RP 43, CP 50-51. Pritchard has not assigned error to the trial court's Finding of Fact 18, or to Conclusions of Law 6 or 7. Nor can any portion of Pritchard's be read as implicitly making those assignments of error. Unchallenged findings of fact are treated as verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). Because the methamphetamine was not discovered as the result of a search, much less as the result of a seizure unsupported by reasonable suspicion, the trial court correctly denied the motion to suppress.

II. The State does not intend to ask for appellate costs.

The State has no intention of filing a cost bill in this case. The evidence in the record is that the defendant's license to drive was suspended, likely due to an inability to pay child support. There is no valid public policy to be served by the further imposition of costs on Pritchard.

D. CONCLUSION

The trial court correctly denied the motion to suppress and Pritchard's conviction should be affirmed.

DATED this 26th day of September, 2016.

Respectfully submitted:

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